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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 PHILLIP WHITE, individually and on  
12 behalf of all others similarly situated,  
13 Plaintiff,

14 v.

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16 T.W. GARNER FOOD CO., a North  
17 Carolina corporation,  
18 Defendant.  
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Case No.: 2:22-cv-06503-MEMF (SKx)

**STIPULATED PROTECTIVE ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective Order does not entitle them to a file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

B. GOOD CAUSE STATEMENT

This action is likely to involve Defendant's trade secrets and other competitively sensitive information, including financial information, sales reports, customer lists (including information implicating privacy rights of third parties), customer purchase histories, information regarding Defendant's manufacturing, packing, shipping and sourcing operations, Defendants' formulas, recipes and ingredients, Defendant's research and development processes, Defendant's market research, and various other commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such information is otherwise generally unavailable to the public, and is or may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to

adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

## 2. DEFINITIONS

2.1 Action: this pending federal law suit.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1           2.7     Expert: a person with specialized knowledge or experience in a matter  
2                   pertinent to the litigation who has been retained by a Party or its counsel  
3                   to serve as an expert witness or as a consultant in this Action.

4           2.8     House Counsel: attorneys who are employees of a party to this  
5                   Action. House Counsel does not include Outside Counsel of Record or  
6                   any other outside counsel.

7           2.9     Non-Party: any natural person, partnership, corporation, association,  
8                   or other legal entity not named as a Party to this action.

9           2.10    Outside Counsel of Record: attorneys who are not employees of a  
10                   party to this Action but are retained to represent or advise a party to this  
11                   Action and have appeared in this Action on behalf of that party or are  
12                   affiliated with a law firm which has appeared on behalf of that party,  
13                   including support staff.

14          2.11    Party: any party to this Action, including all of its officers, directors,  
15                   employees, consultants, retained experts, and Outside Counsel of Record  
16                   (and their support staffs).

17          2.12    Producing Party: a Party or Non-Party that produces Disclosure or  
18                   Discovery Material in this Action.

19          2.13    Professional Vendors: persons or entities that provide litigation  
20                   support services (e.g., photocopying, videotaping, translating, preparing  
21                   exhibits or demonstrations, and organizing, storing, or retrieving data in  
22                   any form or medium) and their employees and subcontractors.

23          2.14    Protected Material: any Disclosure or Discovery Material that is  
24                   designated as "CONFIDENTIAL."

25          2.15    Receiving Party: a Party that receives Disclosure or Discovery  
26                   Material from a Producing Party.

1           3. SCOPE

2           The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or extracted  
4 from Protected Material; (2) all copies, excerpts, summaries, or compilations of  
5 Protected Material; and (3) any testimony, conversations, or presentations by Parties  
6 or their Counsel that might reveal Protected Material.

7           Any use of Protected Material at trial shall be governed by the orders of the trial  
8 judge. This Order does not govern the use of Protected Material at trial.

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10          4. DURATION

11          Even after final disposition of this litigation, the confidentiality obligations  
12 imposed by this Order shall remain in effect until a Designating Party agrees  
13 otherwise in writing or a court order otherwise directs. Final disposition shall be  
14 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
15 or without prejudice; and (2) final judgment herein after the completion and  
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
17 including the time limits for filing any motions or applications for extension of time  
18 pursuant to applicable law.

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20          5. DESIGNATING PROTECTED MATERIAL

21          5.1     Exercise of Restraint and Care in Designating Material for Protection.

22          Each Party or Non-Party that designates information or items for protection under this  
23 Order must take care to limit any such designation to specific material that qualifies  
24 under the appropriate standards. The Designating Party must designate for protection  
25 only those parts of material, documents, items, or oral or written communications that  
26 qualify so that other portions of the material, documents, items, or communications  
27 for which protection is not warranted are not swept unjustifiably within the ambit of  
28 this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
2 shown to be clearly unjustified or that have been made for an improper purpose (e.g.,  
3 to unnecessarily encumber the case development process or to impose unnecessary  
4 expenses and burdens on other parties) may expose the Designating Party to sanctions.  
5 If it comes to a Designating Party's attention that information or items that it  
6 designated for protection do not qualify for protection, that Designating Party must  
7 promptly notify all other Parties that it is withdrawing the inapplicable designation.

8       5.2     Manner and Timing of Designations. Except as otherwise provided in  
9 this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise  
10 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
11 under this Order must be clearly so designated before the material is disclosed or  
12 produced.

13       Designation in conformity with this Order requires:

14       (a) for information in documentary form (*e.g.*, paper or electronic documents,  
15 but excluding transcripts of depositions or other pretrial or trial proceedings), that the  
16 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter  
17 "CONFIDENTIAL legend"), to each page that contains protected material. If only a  
18 portion or portions of the material on a page qualifies for protection, the Producing  
19 Party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
20 markings in the margins).

21       A Party or Non-Party that makes original documents available for inspection  
22 need not designate them for protection until after the inspecting Party has indicated  
23 which documents it would like copied and produced. During the inspection and  
24 before the designation, all of the material made available for inspection shall be  
25 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents  
26 it wants copied and produced, the Producing Party must determine which documents,  
27 or portions thereof, qualify for protection under this Order. Then, before producing  
28 the specified documents, the Producing Party must affix the "CONFIDENTIAL

1 legend” to each page that contains Protected Material. If only a portion or portions of  
2 the material on a page qualifies for protection, the Producing Party also must clearly  
3 identify the protected portion(s) (e.g., by making appropriate markings in the  
4 margins).

5 (b) for testimony given in depositions that the Designating Party identify the  
6 Disclosure or Discovery Material on the record, before the close of the deposition all  
7 protected testimony.

8 (c) for information produced in some form other than documentary and for any  
9 other tangible items, that the Producing Party affix in a prominent place on the  
10 exterior of the container or containers in which the information is stored the legend  
11 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
12 protection, the Producing Party, to the extent practicable, shall identify the protected  
13 portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
15 failure to designate qualified information or items does not, standing alone, waive the  
16 Designating Party’s right to secure protection under this Order for such material.  
17 Upon timely correction of a designation, the Receiving Party must make reasonable  
18 efforts to assure that the material is treated in accordance with the provisions of this  
19 Order.

## 20 21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
23 designation of confidentiality at any time that is consistent with the Court’s  
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party Shall initiate the dispute  
26 resolution process under Civil Local Rule 37-1, *et seq.*

27 6.3 The burden of persuasion in any such challenge proceeding shall be on  
28 the Designating Party. Frivolous challenges, and those made for an improper purpose

(e.g., to harass or impose unnecessary expenses and burdens on other parties), may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the named parties, and officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action, but excluding any class members who are not a named plaintiff;



1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure  
2 is reasonably necessary for this Action and who have signed the “Acknowledgment  
3 and Agreement to Be Bound” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional Vendors  
7 to whom disclosure is reasonably necessary for this Action and who have signed the  
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (g) the author or recipient of a document containing the information or a  
10 custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
12 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
13 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will  
14 not be permitted to keep any confidential information unless they sign the  
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed  
16 by the Designating Party or ordered by the Court. Pages of transcribed deposition  
17 testimony or exhibits to depositions that reveal Protected Material may be separately  
18 bound by the court reporter and may not be disclosed to anyone except as permitted  
19 under this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting personnel, mutually  
21 agreed upon by any of the parties engaged in settlement discussions.

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23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
24 IN OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation  
26 that compels disclosure of any information or items designated in this Action as  
27 “CONFIDENTIAL,” that Party must:  
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1 (a) promptly notify in writing the Designating Party. Such notification shall  
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or  
5 order is subject to this Protective Order. Such notification shall include a copy of this  
6 Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
8 the Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with  
10 the subpoena or court order shall not produce any information designated in this  
11 action as “CONFIDENTIAL” before a determination by the court from which the  
12 subpoena or order issued, unless the Party has obtained the Designating Party’s  
13 permission. The Designating Party shall bear the burden and expense of seeking  
14 protection in that court of its confidential material, and nothing in these provisions  
15 should be construed as authorizing or encouraging a Receiving Party in this Action to  
16 disobey a lawful directive from another court.

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18 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
19 PRODUCED IN THIS LITIGATION

20 (a) The terms of this Order are applicable to information produced by a Non-  
21 Party in this Action and designated as “CONFIDENTIAL.” Such information  
22 produced by Non-Parties in connection with this litigation is protected by the  
23 remedies and relief provided by this Order. Nothing in these provisions should be  
24 construed as prohibiting a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to produce  
26 a Non-Party’s confidential information in its possession, and the Party is subject to an  
27 agreement with the Non-Party not to produce the Non-Party’s confidential  
28 information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party that  
2 some or all of the information requested is subject to a confidentiality agreement with  
3 a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
5 Order in this Action, the relevant discovery request(s), and a reasonably specific  
6 description of the information requested; and

7 (3) make the information requested available for inspection by the Non-Party, if  
8 requested.

9 (c) If the Non-Party fails to seek a protective order from this Court within 14  
10 days of receiving the notice and accompanying information, the Receiving Party may  
11 produce the Non-Party's confidential information responsive to the discovery request.  
12 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce  
13 any information in its possession or control that is subject to the confidentiality  
14 agreement with the Non-Party before a determination by the Court. Absent a court  
15 order to the contrary, the Non-Party shall bear the burden and expense of seeking  
16 protection in this Court of its Protected Material.

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18 10.UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
20 Protected Material to any person or in any circumstance not authorized under this  
21 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
22 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
23 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
24 persons to whom unauthorized disclosures were made of all the terms of this Order,  
25 and (d) request such person or persons to execute the "Acknowledgment and  
26 Agreement to Be Bound" that is attached hereto as Exhibit A.

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1           11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
2           PROTECTED MATERIAL

3           When a Producing Party gives notice to Receiving Parties that certain  
4 inadvertently produced material is subject to a claim of privilege or other protection,  
5 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
7 may be established in an e-discovery order that provides for production without prior  
8 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
9 parties reach an agreement on the effect of disclosure of a communication or  
10 information covered by the attorney-client privilege or work product protection, the  
11 parties may incorporate their agreement in the stipulated protective order submitted to  
12 the Court.

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14           12. MISCELLANEOUS

15           12.1   Right to Relief. Nothing in this Order abridges the right of any person  
16 to seek its modification by the Court in the future.

17           12.2   Right to Assert Other Objections. By stipulating to the entry of this  
18 Protective Order, no Party waives any right it otherwise would have to object to  
19 disclosing or producing any information or item on any ground not addressed in this  
20 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
21 ground to use in evidence of any of the material covered by this Protective Order.

22           12.3   Filing Protected Material. A Party that seeks to file under seal any  
23 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
24 only be filed under seal pursuant to a court order authorizing the sealing of the  
25 specific Protected Material at issue. If a Party's request to file Protected Material  
26 under seal is denied by the court, then the Receiving Party may file the information in  
27 the public record unless otherwise instructed by the court.

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1           13. FINAL DISPOSITION

2           After the final disposition of this Action, as defined in Section 4 (DURATION),  
3 within 60 days of a written request by the Designating Party, each Receiving Party  
4 must return all Protected Material to the Producing Party or destroy such material. As  
5 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
6 compilations, summaries, and any other format reproducing or capturing any of the  
7 Protected Material. Whether the Protected Material is returned or destroyed, the  
8 Receiving Party must submit a written certification to the Producing Party (and, if not  
9 the same person or entity, to the Designating Party) by the 60 day deadline that (1)  
10 identifies (by category, where appropriate) all the Protected Material that was returned  
11 or destroyed; and (2) affirms that the Receiving Party has not retained any copies,  
12 abstracts, compilations, summaries, or any other format reproducing or capturing any  
13 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
16 reports, attorney work product, and consultant and expert work product, even if such  
17 materials contain Protected Material. Any such archival copies that contain or  
18 constitute Protected Material remain subject to this Protective Order as set forth in  
19 Section 4 (DURATION).

20           14. Any violation of this Order may be punished by any and all appropriate  
21 measures including, without limitation, contempt proceedings and/or monetary  
22 sanctions.

23           **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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27           Dated: August 24, 2023



28           Honorable Steve Kim  
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that  
 I have read in its entirety and understand the Stipulated Protective Order that was  
 issued by the United States District Court for the Central District of California on  
 [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the number  
 and initials assigned to it by the court]**. I agree to comply with and to be bound by  
 all the terms of this Stipulated Protective Order, and I understand and acknowledge  
 that failure to so comply could expose me to sanctions and punishment in the nature  
 of contempt. I solemnly promise that I will not disclose in any manner any  
 information or item that is subject to this Stipulated Protective Order to any person or  
 entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Central District of California for the purpose of enforcing the terms of this  
 Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action. I hereby appoint \_\_\_\_\_ [print or  
 type full name] of \_\_\_\_\_ [print or type full  
 address and telephone number] as my California agent for service of process in  
 connection with this action or any proceedings related to enforcement of this  
 Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_